

Judge Advocate Officer Advanced Course
RESERVE COMPONENT MILITARY PERSONNEL LAW

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I. INTRODUCTION.

Commanders have a spectrum of administrative military personnel actions which they can use to motivate, improve, and rehabilitate soldiers whose performance is unsatisfactory or who exhibit other problems which interfere with duty performance or the unit's mission. If soldiers fail to respond to motivation and rehabilitation, other administrative tools are available which commanders can use to take appropriate remedial or adverse action, or to separate soldiers from the Army.

This outline should be supplemented by reference to the applicable regulation, to appropriate local regulations and policies, and any guidance from senior commanders.

II. DUE PROCESS OF LAW - THE STARTING POINT.

A. The Constitution.

1. Bill of Rights (e.g., Fourth, Fifth, and Sixth Amendments) generally inapplicable to military administrative proceedings.
2. Fifth Amendment Due Process—When a life, liberty, or property interest is at stake, it can only be taken with some due process. Civilian courts look at whether military administrative actions truly involve such interests, with mixed results.

B. Administrative Procedures and Military Regulations.

1. Federal courts will seldom reverse military personnel decisions, but are more willing to intervene when the military fails to follow its own regulations.
2. Courts usually expect to see "Minimum" due process: notice of allegations and an opportunity to be heard.

III. SUSPENSION OF FAVORABLE PERSONNEL ACTIONS (FLAGS).

A. Purpose.

1. A suspension of favorable personnel actions (or “flag”) is an administrative hold placed on a soldier. It prevents most favorable personnel actions (promotion, awards, school attendance, payment of reenlistment bonuses, etc.). It remains in place only while the soldier’s chain of command completes an investigation, determines whether or what adverse action to take against the soldier, and completes the adverse action.
2. A flag itself is not an adverse action, because it can be removed as easily as it can be initiated. But since it prevents virtually all favorable action on a soldier, it can have a very adverse effect on the soldier’s career.
3. Properly administered, a flag has two (previously three) components:
 - a. A SIDPERS (Standard Installation/Division Personnel System) transaction which codes a soldier’s records in the Army’s automated personnel database and prevents favorable personnel transactions.
 - b. [Marking and physically segregating the soldier’s Military Personnel Records Jacket (MPRJ) at the military personnel records center, to alert personnel clerks that the soldier was flagged, thus preventing manual favorable personnel transactions at the personnel service company. The elimination of the MPRJ will remove this safeguard and put more emphasis on unit-level management of personnel actions.]
 - c. Battalion S1 (or equivalent) unit management of the flagging system, to keep unit leadership and unit personnel clerks aware of the flag, and lift it when appropriate.

- B. Reference. AR 600-8-2, Suspension of Favorable Personnel Actions (FLAGS), 30 Oct 87. I01, Apr 94.
- C. Procedure.
1. Any commander (or general officer staff head) directs the flag.
 2. Battalion S1 prepares DA Form 268, Report to Suspend Favorable Personnel Action (FLAG), and submits SIDPERS transaction.
 3. Unit notifies soldier.
 4. Flag types and effects:
 - a. Regular (“non-transferable”) flags. Suspends Appointment, reappointment, reenlistment, extension, entry on active duty or active duty for training, reassignment, promotion or reevaluation for promotion, awards and decorations, attendance at civil or military schools, unqualified resignation or discharge, retirement, advance or excess leave, payment of enlistment or selective reenlistment bonus, assumption of command, family member travel to an overseas command and command sponsorship of family members overseas when sponsor is overseas.
 - b. APFT (Army Physical Fitness Test) failure (“transferable”) flags. Promotion, reenlistment, and extension.
 - c. Weight control (“transferable”) flags. Attendance at schools, promotions, assumption of command, awards and decorations, and reenlistment or extension. Message, DAPC-MSP, 011500Z MAR 88, subject: Suspension of Favorable Personnel Actions (FLAGS) - FLAG Conversion Message Number 3.
 5. Unit or battalion manages SIDPERS C95 report, which lists all flagged soldiers.

- 6. Lift flag when appropriate.
- D. Approval Authority. Any commander or general officer staff head.
- E. Appeal. None.
- F. Records. DA Form 268 maintained only so long as soldier is flagged. No permanent record of flag itself, although there may well be a permanent record of the underlying adverse action which required the flag.

IV. EXTRA TRAINING.

- A. Purpose. An effective, nonpunitive corrective measure.
- B. Reference. AR 600-20, para 4-6b.
- C. Formal Procedure: None.
 - 1. Any leader may order a soldier to train to overcome a deficiency.
 - a. Must be directly related to the deficiency.
 - b. Must be aimed at improving the soldier's performance.
 - 2. Not punishment; must stop when deficiency is overcome.
- D. Approval Authority. Any commander. An “inherent power of command.” May be delegated.
- E. Appeal. No specific procedure.
- F. Records. None; *however*. . .

1. “Deficiencies *satisfactorily corrected* by means of training and instruction will be not noted in the official records of the soldier concerned.” AR 600-20, para 4-6b(2) (emphasis added).
2. If the problem merits it, consider documenting with a counseling with a view towards separation. Destroy the counseling if the problem truly is cured; otherwise, proceed to separation.

Caution: Inappropriate extra training may expose the command to allegations of punishment without due process

V. REVOCATION OF PASS PRIVILEGES.

- A. Purpose. Commanders should grant passes (defined as short, nonchargeable, authorized absences from post or place of duty during normal off-duty hours) to those soldiers whose performance of duty and conduct merits approval. If a soldier’s performance of duty and conduct do not merit approval, do not approve a pass.
- B. Reference. AR 600-8-10, chap 5, section XIV.
- C. Procedure. No formal procedure. Regular passes usually do not require a DA Form 31 (although one may be used). If a soldier’s pass privileges are revoked, the soldier’s immediate commander or his or her representative should inform the soldier in writing. If DA Form 31 is used for regular passes, indicate disapproval on the form.
- D. Approval Authority. Any commander.
- E. Appeal. No special procedures.
- F. Records. None required. Consider documenting with a counseling with a view towards separation.

- G. Caution: Withholding of regular passes to extreme limits (i.e. to billets) may cause allegations of punishment without due process.

VI. COUNSELING WITH A VIEW TOWARDS SEPARATION.

- A. Purpose. An administrative prerequisite to many administrative separations, counseling with a view towards separation serves as a “final warning” to a soldier to improve performance or face discharge. It also is an attempt by the Army to protect its investment in the soldier’s recruiting and training costs. *Compare with* general counseling (AR 600-20, para 2-1e) (basic leadership tool used to assist soldiers in professional growth; not necessarily adverse).
- B. Reference. AR 135-178, para 1-12.
- C. Procedure.
1. ***May*** be used at any time. At least one recorded counseling is ***required*** as a prerequisite for these grounds for discharge under AR 135-178:
 - a. Involuntary separation due to parenthood, para 4-10.
 - b. Personality disorder, para 4-8a(4).
 - c. Entry level performance and conduct, chap 5.
 - d. Unsatisfactory performance, chap 6.
 - e. Minor disciplinary infractions or a pattern of misconduct, para 7-11a and 7-11b.
 - f. Failure of an ARNGUS soldier to meet body fat standards, para. 4-25

2. Any responsible person will advise the soldier of:
 - a. The reason for counseling.
 - b. The fact that separation may be initiated if behavior continues.
 - c. The type of discharge that could result from possible separation.
 - d. The effect of each type.
- D. Give the soldier a reasonable opportunity to overcome the deficiencies.
- E. Approval Authority. None. Counseling may be conducted by “a responsible person.” AR 135-178, para 1-12b.
- F. Appeal. None.
- G. Records.
 1. To be used as a prerequisite for separation, each counseling session must be recorded in writing.
 2. DA Form 4856 (General Counseling Form) normally should be used for this purpose.
 3. Filed in unit personnel files - not in MPRJ (Military Personnel Records Jacket) or OMPF (Official Military Personnel File). No permanent, long-term record, unless incorporated into separation action. Maintain until soldier departs unit; destroy one year later IAW MARKS.

4. Commander's Notebook. Beware of Freedom of Information Act access. Generally, no right to access under FOIA if:
 - a. Prepared voluntarily.
 - b. Used only as a memory aid by preparer.
5. Article 15 (DA Form 2627) does not satisfy requirement in and of itself. Solution: have legal clerk/legal center prepare DA Form 4856 to accompany each Art 15.

VII. REHABILITATIVE TRANSFER.

1. Basic Rule: A soldier must be reassigned to a new unit, if available in commuting distance, for two months at least once before the following types of separation action can be initiated under AR 135-178:
 - a. Involuntary separation due to parenthood, para 4-10.
 - b. Personality disorder, para 4-8a(4).
 - c. Entry level performance and conduct, chap 5.
 - d. Unsatisfactory performance, chap 6.
 - e. Minor disciplinary infractions or a pattern of misconduct, para 7-11a and 7-11b.
 - f. Failure of an ARNGUS soldier to meet body fat standards, para. 4-25

2. May waive requirement for rehabilitative transfer. If no other unit available, “proper alternate rehabilitation measures” should be taken.

VIII. ADMINISTRATIVE REPRIMAND, CENSURE, OR ADMONITION.

A. Purpose.

1. Documents misconduct or poor performance in official files.
2. Leadership tool or career threatening adverse action, depending on filing decision.
3. Be wary of information originating *solely* from intelligence and personnel security files: this information requires special handling (*See, e.g., AR 600-37, para. 4-6; AR 380-67, ch. 8*).

B. References.

1. AR 600-37.
2. AR 25-400-2, The Modern Army Recordkeeping System (MARKS), para B-80 and Table B-91, 26 Feb 93 (regarding MARKS number 640a).

C. Procedure.

1. Drafting and initiating the letter.

- a. For enlisted soldiers. Initiated by the person's immediate commander, any higher commander in the chain of command, a supervisor, school commandant, general officer, or GCMCA.
- b. For officers. As above, less “supervisor,” plus any rating official.

2. Contents.

- a. Reason for reprimand.
- b. The statement that the reprimand was imposed as an administrative measure and not as punishment under Article 15. AR 27-10, para 3-3.
- c. If the reprimand is intended for filing in the OMPF, either the reprimand or the document referring the reprimand should indicate where the drafter desires to file the reprimand.

COMPANY A
16TH SIGNAL BATTALION, 29TH SIGNAL GROUP
FORT ARLINGTON, VIRGINIA 11111

ABCD-EF-B

6 June 1996

MEMORANDUM FOR PV2 Kathleen B. Nash, Company A, 16th Signal Battalion,
29th Signal Group, Fort Arlington, Virginia 11111

SUBJECT: Written Reprimand UP AR 600-37

1. On 22, 24, 26, and 31 May 1996, you were absent without authority from your appointed place of duty. You failed to report to the unit supply room at Company A, 16th Signal Battalion, 29th Signal Group, at the appointed time, 0800, to begin your duties on those dates. Further you were formally counseled on a number of prior occasions and orally admonished for similar offenses. You are hereby reprimanded for your conduct on 22, 24, 26, and 31 May.
2. You are expected to be at your appointed place of duty at the appointed time unless excused by proper authority. Your persistent tardiness will not be tolerated in this unit.
3. This is an administrative reprimand imposed under the provisions of AR 600-37 and not as punishment under UCMJ, article 15.
4. I intend to file this written reprimand in your unit personnel file. You have 72 hours from the receipt of this reprimand to submit matters in rebuttal or on your behalf. Your response should be by endorsement to this reprimand. I will withhold my decision on imposing and filing this reprimand until I receive and consider your response.

HARD CHARGER
Captain, SC
Commanding

Figure 3

3. Notice and rebuttal by the soldier. Paras 3-2 & 3-6.
 - a. Notice (a copy of the reprimand).
 - b. Rebuttal (by endorsement).
 - c. No right to counsel in regulation, but counsel routinely made available.
- D. Appeal. Depends on the filing of the letter.
 1. Local filing. No formal appeal process.
 2. OMPF filing. Appealed to DA Suitability Evaluation Board (DASEB).
 - a. Removal. Grounds: document is untrue or unjust. Normally, consideration of these appeals is restricted to SSG and above.
 - b. Transfer from P-fiche to R-fiche. Grounds: untrue, unjust, or that the reprimand has served its intended purpose. Again, appeals normally restricted to SSG and above. If basis is that reprimand has served its intended purpose, soldier must wait at least one year since imposition of the reprimand and have received at least one OER or NCOER.
- E. Records. Memorandum maintained in local unit files until 12 months after a soldier's departure, or permanently on the OMPF.

IX. LOCALLY IMPOSED (OR "FIELD") BAR TO REENLISTMENT.

- A. BARS TO REENLISTMENT. AR 140-111, Section VII (for USAR soldiers) NGR 600-200 (for ARNG soldiers).

1. A bar to reenlistment is not a punitive action. It is designed to put the soldier on notice that he or she:
 - a. Is not a candidate for reenlistment, and
 - b. May be separated if the circumstances that gave rise to the bar are not overcome.
2. When may a bar be initiated?
 - a. Bars normally are not imposed when:
 - (1) A soldier has been assigned to the unit for less than 90 days, or
 - (2) During the last 90 days (30 days for AGRs) before the soldier is discharged, transferred from the command or released from active duty.
 - b. Rules related to retirement eligibility. If a bar is initiated against a soldier who at least 18 but less than 20 years qualifying years at ETS, and no action has been taken to extend the soldier to retirement eligibility, final approval must come from OCAR.
3. Who may initiate a bar?
 - a. Any commander in the soldier's chain of command.
 - b. Any commissioned officer in the soldier's chain of command on a headquarters staff, agency or activity for soldiers he/she has supervisory responsibility.
 - c. The chief of an enlisted management division under ARPERSCOM.

4. What are the categories of soldiers that should be considered for a bar?
 - a. Untrainable soldiers. Individuals who lack the ability, aptitudes or motivation to qualify for an MOS.
 - b. Unsuitable soldiers.
 - (1) Single soldiers/in-service couples with dependents who fail to put a family care plan in place.
 - (2) Persons who exhibit interests or habits detrimental to the maintenance of good order and discipline.
 - (3) Paragraph 1-30c, AR 140-111 contains a long, but not exclusive, list of conditions that are adequate basis for initiation of bar.
 - c. AGR soldiers who are not suited for further AGR service but are qualified for continued Reserve service may be barred from AGR service only.
5. Who may approve a bar?
 - a. Soldier with less than 10 years of service at ETS: first commander in rank of LTC or SPCMCA.
 - b. Soldiers with 10 to 18 years; those with more than 20 years of qualifying service; those with 18 to 20 years when action has to taken to extend the soldier to qualify for retirement: first general officer or the GCMCA.
 - c. Soldiers with 18 to 20 years, when not extended to achieve retirement eligibility: OCAR.
6. What are procedural rights of soldier?

- a. Notice must be provided by officer initiating the bar.
 - b. Soldier has 30 days to respond. AGR soldiers have 7 days.
 - c. May request voluntarily REFRAD or discharge.
 - d. Appeal the bar.
7. When must the bar be reviewed?
- a. At least 6 months after approval and each 6 months thereafter.
 - b. At least 30 days before the soldier's scheduled departure from the unit, REFRAD or discharge from USAR.
8. Who must act on appeals?
- a. Soldiers with less than 10 years the first general officer or GCMCA.
 - b. Soldiers with more than 10 years --OCAR.
 - c. If OCAR approved the bar no appeal is authorized.

B. USAR AGR Qualitative Management Program (QMP)

- 1. Enhance the quality of the AGR enlisted force by screening out the “nonprogressive and nonproductive” soldiers.

2. QMP HQDA imposed Bar to Reenlistment removes soldier from the AGR program, but does not preclude their reenlistment in another USAR status (TPU or IRR).
3. Screening done at PERSCOM (USAR) Command Sergeant Major and Sergeant Major selection boards and PERSCOM (USAR) AGR Enlisted Promotion Boards for Sergeants and above with 11 or more years of total military service (AC/RC). Based upon board review of the soldier's OMPF Performance fiche, and board submissions such as official photograph.
4. QMP bar to reenlistment is effective on the date of the bar to reenlist memorandum from the Commander, ARPERSCOM to the individual soldier.
5. The first LTC (or above) in the effected AGR soldiers chain of command is sent the memorandum and supporting documents, and is required to personally counsel the soldier, using a DA Form 4856 (General Counseling Statement). The counseling officer must have the soldier fill out a Statement of Options (DA Form 8029-R). The supervisor must explain the impact of the QMP bar to reenlistment, discharge options, and appellate rights.
6. The soldier or the commander may appeal the QMP bar to Commander, ARPERSCOM, on the grounds that the soldier has overcome the deficiencies listed as the basis for the bar action, and/or material error in the soldier's records that were reviewed by the selection board. An appeal stays the REFRAD/discharge process, until the appeal has been finalized or the soldier elects REFRAD or discharge.
 - a. Soldier has 90 days from date of receipt of the Statement of Options (DA Form 8029-R) to submit appeal.
 - b. Commander (LTC or above) can also initiate appeal. Also has 90 days from receipt of the QMP memorandum, which is processed through the chain of command to the first General Officer, who sends it to the Commander, ARPERSCOM.

- c. The Commander, ARPERSCOM, sends all QMP appeals to a PERSCOM (USAR) Standby Advisory Board (STAB), in conjunction with the next scheduled USAR promotion board, and the STAB reviews the basis for the QMP action and the appellate submissions de novo. The STAB appeal decisions are provided to the Commander, ARPERSCOM, who notifies the AGR soldier's commander (LTC or above).
- 7. The AGR soldier's commander is required to initiate involuntary discharge or REFRAD proceedings per AR 635-200 NLT 60 days following the date the soldier is notified of the QMP bar, unless the soldier elects to retire, appeal or voluntary REFRAD or discharge. If a soldier appeals, the 60 day limit is tolled until the date of appeal denial notification. The separation authority need not separate the soldier.
- C. A decision by a separation authority to retain a soldier, or recommendation by an administrative separation board to retain a soldier, does **not** require the removal of a QMP bar to reenlistment.

X. THE ARMY WEIGHT CONTROL PROGRAM.

- A. Purpose. To ensure that all soldiers:
 - 1. Are able to meet the physical demands of their duties under combat conditions.
 - 2. Present a trim military appearance at all times.
- B. Reference.
 - 1. AR 600-9, The Army Weight Control Program, 1 Sep 86 (as published in All Ranks Personnel Update 15, 1 Oct 90). I01, 4 Mar 94 (exp 4 Mar 96). New version of AR 600-9 pending. Expected publication was Summer 1995.

2. National Academy of Sciences Institute of Medicine, Body Composition and Physical Performance: Applications for the Military Services (Bernadette M. Marriott and Judith Grumstrup-Scott eds., 1992) (study commissioned by the US Army Medical Research and Development Command which criticizes the Army's weight control program).

C. Procedure.

1. Commanders and supervisors will monitor soldiers to ensure that they maintain proper weight. At minimum, soldiers will be weighed when they take the APFT or at least every 6 months. Commander may direct weight check if soldier presents an unmilitary appearance.
2. Soldiers exceeding the screening table weight will be tested for body fat (tape measure).
3. Overweight personnel will be flagged IAW AR 600-8-2. They are:
 - a. Nonpromotable.
 - b. Will not be assigned to command positions.
 - c. not authorized to attend professional military schooling. All soldiers scheduled to attend professional military schooling will be screened before departure. If the soldier exceeds the screening table weight, he will not be allowed to depart unless his commander determines that he meets body fat composition standards
 - d. Will not be allowed to reenlistment or extend unless:
 - (1) The GCMCA approves an extension of a soldier who either has a temporary medical condition that precludes weight loss or is pregnant and otherwise qualified for reenlistment.

- (2) The GCMCA approves an extension of a soldier who has completed a minimum of 18 years active federal service. Application for retirement will be submitted at the time the extension is approved.

4. Will be enrolled in a weight control program.

- a. Overweight soldiers who fail to make satisfactory progress within 6 months will either be processed for a bar to reenlistment or will have separation proceedings initiated against them. Satisfactory progress is 3-8 pounds per month. Commander must notify the soldier in writing that separation is being considered and consider the soldier's response. If response is not satisfactory, initiate separation. Separation for USAR TPU and ARNGUS soldiers is effected UP AR 135-178, chap 14. Results in an honorable discharge.
- b. Overweight soldiers who successfully complete a weight control program, but within 12 months after removal from the program again exceed body fat standards, will be processed for separation.

- D. Approval Authority.

1. Authority to place a soldier in the weight control program: company-level commander.
2. Separation or bar authority same as other separations for USAR TPU and ARNG enlisted soldiers. For USAR AGRS:
 - a. LTC-level commander if soldier has less than six years active and reserve service (notification procedure used).
 - b. SPCMCA if soldier has six or more years service (administrative board procedure used).

- E. Appeal. No specific procedure.

XI. DRUNK OR DRUGGED DRIVING - ADMINISTRATIVE SANCTIONS.

- A. Purpose. Drunk driving (including drugged driving) administrative sanctions operate in concert with the Army's Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) to prevent alcohol and drug abuse, identify abusers, rehabilitate those abusers who warrant retention, and separate those who do not.
- B. Reference.
 - 1. AR 190-5 (paragraph citations in this section are to AR 190-5).
 - 2. AR 600-85.
- C. Applicability:
 - 1. AR 190-5 applies to AGR soldiers, and Reserve soldiers apprehended for DUI while in a duty status. Driving privilege suspension/revocation on Army installations applies to all persons, military or not. States need not apply AR 190-5 (traffic regulation) on State installations.
 - 2. AR 600-85, Chapter 9 lays out procedures applicable to soldiers on duty for 30 days or more.
- D. Procedures.

1. Withdrawal of installation driving privileges. AR 190-5, para 2-5.
 - a. **Suspension** is immediate pending resolution of drunk driving charges brought in the following circumstances:
 - (1) Refusal to take or complete a lawfully requested chemical test to determine contents of blood for alcohol or other drugs.
 - (2) Operating a motor vehicle with a blood alcohol content (BAC) of 0.10% by volume or higher or in violation of the law of the jurisdiction that is being assimilated on the installation.
 - (3) Operating a motor vehicle with a BAC of at least 0.05% by volume but less than 0.10% blood alcohol by volume in violation of the law of the jurisdiction in which the vehicle is being operated, if the jurisdiction imposes a suspension solely on the basis of the BAC.
 - (4) On an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving.
 - b. **Limited hearing.** Para 2-6. A person whose driving privileges are suspended has ten days in which to request a hearing. If requested, must be conducted by the installation commander or delegate within ten days. A decision must issue within ten duty days of the hearing. Issues addressed:
 - (1) Did the law enforcement official have reasonable grounds to believe person was DWI or in actual physical control of motor vehicle while under the influence of alcohol or other drugs?
 - (2) Was the apprehension or citation lawful?

- (3) Was the person lawfully requested to submit to a test for alcohol or other drug content of blood, breath, or urine and was he informed of the consequences of refusal to take or fail to complete such test?
- (4) Did the person refuse to submit to the test for alcohol or other drug content of blood, breath, or urine; fail to complete the test; or complete the test and the result was .10% or higher BAC, or showed results indicating the presence of other drugs for an on-post apprehension or in violation of state laws for an off-post apprehension?
- (5) Was the testing method used valid and reliable and were the results accurately evaluated?

c. **Revocation** for period of one year. Para 2-5.

- (1) Lawfully apprehended for DWI and refused to submit to or to complete a test to measure the alcohol content in the blood, or detect the presence of any other drug.
- (2) Conviction, NJP, or military or civilian administrative action resulted in suspension or revocation of a driver's license for DWI.
- (3) Compute from date of original suspension, exclusive of periods when full driving privileges restored pending resolution of charges.

d. **Restricted privileges.** Para 2-11.

- (1) May be requested at any time.
- (2) GCMCA acts on all DWI/DUI requests for restricted privileges.

2. Referral to ADAPCP. Para 2-9.
 - a. Mandatory (within 10 days).
 - b. Enrollment is discretionary.
3. General Officer Written Reprimand. Para 2-7. (See Figure 5, p. 3-31).
 - a. Mandatory for active duty Army commissioned and warrant officers and NCOs, including corporals. OPTIONAL otherwise.
 - b. General officer will sign.
 - c. Based on:
 - (1) Conviction of intoxicated driving or driving under the influence of alcohol or other drugs, on or off the installation.
 - (2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.
 - (3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content is 0.10% or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of state laws, irrespective of other charges.

- (4) Driving or being in physical control of a motor vehicle, either on or off the installation, when lawfully requested chemical tests reflect the presence of illegal drugs.
 - d. Filing is IAW AR 600-37.
 - (1) Decide to not file.
 - (2) Unit Personnel File.
 - (3) OMPF.
- 4. Consider other administrative actions. Para 2-7c.
 - a. Administrative reduction per AR 600-200.
 - b. Bar to reenlistment.
 - c. Administrative discharge.

Department of the Army
52d Infantry Division (Mechanized) and Fort Arlington
Fort Arlington, Virginia 11111-1111

ABCD-EF-G

15 June 1996

MEMORANDUM FOR 1LT Gideon Pillow, Company A, 2d Battalion, 11th Infantry,
Fort Arlington, Virginia 11111

SUBJECT: Written Reprimand UP AR 600-37

1. On 1 June 1996 you were apprehended at approximately 2200 while driving your privately owned vehicle on Fort Arlington. The arresting officer cited you for driving under the influence of intoxicating liquor. Subsequently, on 3 June 1996, you were convicted of that offense after a trial on the merits in the Federal Magistrate's Court on Fort Arlington. I hereby reprimand you for your conduct.
2. Your conduct on 1 June 1996 demonstrates a serious disregard for your own safety and that of others. It raises grave doubts as to whether you can perform your duties. Your lack of judgment in this incident calls into question whether you deserve the special trust and confidence that the President of the United States has reposed in you as a commissioned officer. I charge you to conduct yourself in a manner that is worthy of an officer in the United States Army.
3. This is an administrative reprimand imposed under the provisions of AR 600-37 and not as punishment under UCMJ, Article 15.
4. I intend to file this written reprimand in your Official Military Personnel File. You have 72 hours from the receipt of this reprimand to submit matters in rebuttal or on your behalf. Your response, if any, should be by endorsement to this reprimand. I will withhold my decision on imposing and filing this reprimand until I receive and consider any response you may make.

RICHARD J. HALFTRACK
Major General, USA
Commanding

Figure 5

XII. USAR ENLISTED REDUCTION IN GRADE.

- A. Purpose. Reserve soldiers can be administratively reduced in grade for, among other reasons, civil convictions, inefficiency, or unsatisfactory participation.
 - 1. Civil conviction. A soldier convicted by a civil court (domestic or foreign) or adjudged a juvenile offender by a civil court (domestic or foreign) will be reduced or considered for reduction. AR 140-158, para 7-9.
 - 2. Inefficiency. Inefficiency is a demonstration of characteristics that shows that the person cannot perform duties and responsibilities of the grade and MOS. Inefficiency may also include an act or conduct that clearly shows that the soldier lacks those abilities and qualities normally required and expected of an individual of that grade and experience. Commanders may consider misconduct, including conviction by a civil court, as bearing on efficiency. A soldier may be reduced under this authority for long-standing unpaid personal debts that he or she has not made a reasonable effort to pay. AR 140-158, para 67-10.
- B. Reference AR 140-158, Chapter 7.
- C. Authority to Reduce.
 - 1. PV2, PFC, and SPC/CPL - Company, troop, battery, and separate detachment commanders.
 - 2. SGT and SSG - Field grade commander of any organization authorized a LTC or higher grade commander.
 - 3. SFC, MSG/1SG, and SGM/CSM - Commanders of organizations authorized a COL or higher grade commander.

D. Procedure.

1. Civil Court Conviction (domestic or foreign, or adjudication as a juvenile offender). AR 140-158, table 7-1.
 - a. Will be reduced to PVT, E-1, if sentence includes death or confinement for one year or more (not suspended). Board action not required.
 - b. Will be considered for reduction (one or more grades) if sentenced to confinement for more than 30 days but less than one year (not suspended) or confinement for one year or more (suspended). Board action required for SGT or above.
 - c. May be considered for reduction - all other offenses. Board action required for SGT or above.
2. Inefficiency. Para 7-10.
 - a. Cannot perform duties and responsibilities of the grade and MOS. Inefficiency includes long standing unpaid debts that the soldier has not made a reasonable effort to pay.
 - b. Document inefficiency. Should establish a pattern of inefficiency rather than identify a specific incident. A single act of misconduct is not a sufficient basis for reduction for inefficiency.
 - c. Soldier must have been in unit at least 90 days.
 - d. May reduce only one grade.
3. Soldier gets notice and opportunity to respond.
 - a. SPC/CPL and below - no board.

- b. SGT and above - reduction board is usually required (exceptions noted above). Board appearance may be declined in writing, which will be considered acceptance of the reduction board's action.

4. Reduction Boards. Paras 7-6 to 7-8.

- a. Must have both officers and enlisted members.
- b. At least three voting members.
- c. Members impartial.
- d. Recorder without vote appointed.
- e. Board has officer or enlisted soldier or both of same sex as soldier being considered for reduction.
- f. For inefficiency cases only, one board member will be familiar with soldier's MOS or field of specialization.
- g. If soldier is minority and requests minority member on board, generally must provide minority member.

E. Appeal.

- 1. SSG and below - next higher authority.
- 2. SFC and above - next higher authority who is a general officer.

F. Records. Filed in OMPF.

XIII. RELIEF FOR CAUSE/RETIREMENT GRADE DETERMINATIONS

A. RELIEF FOR CAUSE. AR 600-20, para 2-15; AR 135-18, Table 2-6, Rule I; AR 635-105, para. 5-18, and AR 623-205.

1. Serious action taken against a commanding officer or senior non-commissioned officer for failure in the performance of their duty. Duty performance is defined in AR 623-105, para 5-18, as the “completion of assigned tasks in a competent manner and compliance at all times with the accepted professional officer standard shown in Part IV, DA Form 67-8. These standards apply to conduct both on and off duty.”
2. Relief is generally at the discretion of the relieving commander, subject to requirements of prior formal written counseling, if appropriate to the circumstances (substandard performance). Relief action against commanders may not be taken until the relieving commander has received written approval from the first general officer in the chain of command of the subject officer, unless the relieving official is a general officer, whereby no further approval would be required.
3. An officer or noncommissioned officer evaluation report will be done in all cases where a soldier is relieved for cause, IAW AR 623-105 (officers) or AR 623-205 (enlisted).
4. If relief for cause is based upon the findings and recommendations of an informal AR 15-6 investigation, the referral procedures of that regulation must be complied with prior to initiating any relief for cause action, even if the relief evaluation report is referred to the subject. A relieving commander may temporarily suspend from assigned duties an officer or NCO pending completion of AR 15-6 procedural safeguards (rebuttal).

- B. REQUEST FOR ARMY GRADE DETERMINATION REVIEW BOARD (AGDRB) of SOLDIER/OFFICER SEPARATED FOR SERIOUS MISCONDUCT. AR 15-80, Army Grade Determination Review Board (28 October 1986) and AR 135-180, Qualifying Service for Retired Pay Nonregular Service, (22 Aug. 1974).
1. Army National Guard and Army Reserve officers and soldiers who are administrative discharged for serious misconduct, who qualify for Reserve retirement pay, receive their full retirement pay at their last highest pay grade.
 2. Exception: Enlisted soldiers who receive an OTH discharge in an administrative separation for serious misconduct are reduced to Private E-1, which impacts upon their retirement pay. See AR 140-158, para. 7-12a, NGR 600-200, para., 6-44c., and AR 135-178, para. 2-20. No such reduction for officers who receive OTH for serious misconduct.
 3. The AGDRB may reduce the final retirement grade of an RC officer who was found to have served unsatisfactorily in their last pay grade. AR 15-80, para. 7c. Such findings can include the record of an administrative separation board where findings of illegal drug use or other serious misconduct were made or GOMOR.